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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	78579524
Applicant	Fleetwood Enterprises, Inc.
Applied for Mark	ROYALE
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Submission	Reply Brief
Attachments	Applicant's Reply Brief (ROYALE).pdf (6 pages)(227636 bytes)
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Date	07/19/2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Applicant:	Fleetwood Enterprises, Inc.	)	
		)	
Serial No.	78/579,524	)	Examining Attorney:
		)	Paula B. Mays
Filed:	March 3, 2005	)	
		)	Law Office 102
Mark:	ROYALE	)	
		)	
Our Ref.	040401/289107	)	
			Date: July 19, 2007

APPLICANT'S REPLY BRIEF

Commissioner for Trademarks
Box TTAB
P.O. Box 1451
Alexandria, Virginia 22313-1451

Madam:

Applicant submits this brief in reply to the examining attorney's appeal brief. This brief is divided into two parts, one addressing the marks and the other addressing the goods.

A. The Marks

It is the position of the examining attorney that "the sound, commercial meaning and impression of the marks herein are closely related." (Page 3 of the Examining Attorney's Appeal Brief). While the examining attorney concedes that "the terms are spelled slightly differently and may be pronounced slightly differently," it is contended that slight differences in sound will not avoid likelihood of confusion. While arguing that similarity in sound alone is sufficient

to find likelihood of confusion, the examining attorney does not seriously argue that the marks are similar in sound. This position would be ridiculous since the word "CARGO" has no similarity in sound or, for that matter, in appearance in applicant's mark. In fact, the evidence submitted by applicant and discussed in detail on pages 6-7 of its brief shows that the Trademark Office has been consistent in finding no likelihood of confusion between the marks ROYALE and ROYAL when used on the same goods. Similarly, other evidence submitted by applicant shows that the Trademark Office has consistently found no likelihood of confusion between the mark ROYALE and a ROYAL combination mark where the second word is weak for identical goods and services. See pages 10-11 of applicant's brief and the marks cited therein. With this reality in mind, the examiner states, "even if they are not pronounced exactly the same . . . [this fact] does not change the commercial impression of the marks in the mind of consumers."

In trying to argue that the marks have the same commercial impression and meaning, the examining attorney states at page 4, "Both marks have the same impression that is that the products of the parties are of the highest quality and perhaps are fit for transporting 'Royalty' or the goods of royals." This may be the commercial impression of the cited mark, but it is certainly not the commercial impression of applicant's mark. There is no suggestion in applicant's mark that the goods are fit for transporting Royalty or the goods of royals.

Applicant tries to fit the present case into the holding of Floss Aid Corp. v. John O. Butler Co., 205 USPQ 274 (TTAB 1979), where the Trademark Trial and

Appeal Board concluded that the average consumer will not likely consider the distinction between a floss aid, a floss mate, and a floss helper. If the marks in question were ROYAL CARGO versus ROYAL BAGGAGE, the examining attorney's argument might be pertinent. However, there is nothing in applicant's mark that suggests any connection with the mark ROYAL CARGO. The examining attorney simply disregards the term "CARGO" because it is alleged to be "merely descriptive and does not create a distinct commercial impression in the mind of consumers." Certainly, it creates a different impression in the minds of consumers than that created by applicant's mark. While the word "CARGO" is disclaimed, a disclaimer does not remove the disclaimed matter from the mark. TMEP, § 1213.10. Furthermore, in evaluating similarity the mark as a whole, including the disclaimed matter, must be considered. Id. The law and case discussed by the examining attorney are simply not pertinent to the issues at hand.

In the end, the examining attorney simply dismisses applicant's evidence with the statement at page 6 that "the cadre of 'Royal' marks for unrelated goods have [sic] no bearing on the likelihood of confusion for the term 'Royale,' for related trailer goods." If there is no likelihood of confusion between the marks ROYALE and ROYAL or ROYAL combination marks for identical goods, why wouldn't this be relevant in a situation involving non-identical goods? The examining attorney offers no response to this obvious conclusion other than to say that every pair of marks discussed involving identical goods were, in some way, not relevant because those identical goods were not the same goods

involved in the present case. That, of course, makes no sense. Where the goods are identical, the only issue to be considered by the Trademark Office is whether the marks are likely to cause confusion. Obviously, the Trademark Office does not find likelihood of confusion between the marks ROYALE and ROYAL.

B. The Goods

The examining attorney argues that the goods of the parties are "very closely related," but her misconception as to the nature of the goods is clearly evident in the statement at the bottom of page 6 reading, "Since the identification of the applicant's goods is broad, it is presumed that the application encompasses all goods of the type described, including those in the registrant's more specific identification, that they move in all normal channels of trade and that they are available to all potential customers." Applicant does indeed offer camping trailers. A camping trailer includes a fold-up tent in which someone camps or sleeps. There is no support for the examiner's statement on page 7 that "registrant offers a variety of trailers, which may or may not include 'camping trailers.'" There is no reference whatsoever to camping trailers in the registrant's goods. Those goods are specifically "trailers and transportation equipment, namely, stock trailers, horse trailers, utility trailers, flat deck trailers, truck decks, enclosed cargo trailers for the transportation of snowmobiles, automobiles and other equipment and cargo trailers." A camping trailer is not considered transportation equipment in the sense of carrying cargo. Applicant's goods do

not encompass registrant's goods nor do registrant's goods encompass applicant's goods. The only issue is whether the goods are sufficiently related so that there is a likelihood of confusion when used with marks having different sounds, appearances and commercial impressions.

In attempting to argue that the goods are related, the examining attorney makes one unsupported statement after another, and in particular that both applicant's and registrant's "trailers" are likely to be:

- Marketed in the same manner.
- Appeal to the same consumers.
- Likely to be seen in magazine advertisements, radio and print advertisements.
- Are likely to be available to the general consumers who desire campers or trailers whether for cargo or for personal usage.

The examining attorney also tries to analogize the situation as being similar to automobiles and auto parts, referring to the Trademark Trial and Appeal Board as having "consistently found that manufacturers of vehicles also produce accessories and attachments for these goods and market them under the same mark."

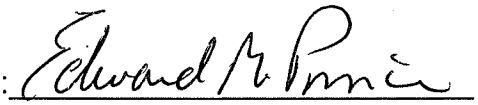
It seems that the examining attorney may have forgotten the initial office action in this case in which applicant's mark was rejected on the grounds of likelihood of confusion with respect to the mark ROYALE, Reg. No. 1,562,070, for motor vehicles, namely, automobiles, engines therefor and structural parts thereof, the mark Royal, Reg. No. 2,140,117, for truck bodies for on road vehicles and the mark ROYAL CARGO discussed herein. In the initial office

action, the examining attorney simply referred to the goods of all four parties as being "vehicles" and then concentrated her discussion on the issue of the similarity of the marks. A close reading of the examiner's contentions in this case shows that the examiner must certainly conclude that the Office was in error in registering the mark ROYAL CARGO over the earlier registrations on the marks ROYALE for automobiles and ROYAL for truck bodies. Clearly, no likelihood of confusion was found because of the differences in the goods and particularly the marks. It is further apparent that these goods are quite expensive and that the purchase of the same will not be casually undertaken. The same situation exists in the present case. It is obvious, therefore, that one would not be confused by the use of the mark ROYAL on camping trailers.

For the above reasons, the refusal to register applicant's mark should be reversed.

Respectfully submitted,

ALSTON & BIRD LLP

By: 
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